Petition

NO. 81-5641

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

ROCCO FISCHETTI
Petitioner

V

JOSEPH ASCIONE
Respondent

PETITION FOR WRIT OF CERTIORARI TO
THE STATE OF NEW YORK COURT OF APPEALS

ROCCO FISCHETTI
ACTING AS ATTORNEY
TELEPHONE-(212)- 539-1059
38-18 14) STOET
FLUSHING, NEW YORK 11354

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Reasons For Granting The Writ:

1. The Petitioner did not discover the tort till March 1975 and accordingly filed within 2 years allowed by State Law. The Statue of Limitations decision should be reversed 6

2. The appellate court offered no opinion on the appeals of the Petitioner regarding the discovery date. The court did not consider the discovery date. 7

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Appendix A- No. Opinion

Appendix B- Order denying petition for Rehearing

Appendix C- Letter to act as own attorney & Notice of Appeal

Cases: Caron Vs. Mauren 80-017

Statues: CPLR 213 (g) & CPLE (F)

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Petitioner filed within the discovery date , which entitles the Petitioner a reversal of the Statue of Limitations decision.

2. Whether, it was improper for the appellate courts to give no opinion tbe the Petitioners' appeal.

IN THE SUPREME COURT OF THE UNITED STATES

September Term, 1981

No. 81 5641

ROCCO FISCHETTI,

PETITIONER,

--vs--

JOSEPH ASCIONE, RESPONDENT,

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF NEW YORK

The Petitioner, Rocco Fischetti, respectfully prays that a Writ of Certiorari issue to review the judgement of the Court of Appeals State of New York, which denied my Rehearing Petition on 7 July , 1981.

OPINION BELOW

The Court of Appeals did not enter an opinion. The court simply denied a rehearing on 7 July 1981. A copy of the decision, of no opinion affirming the lower court ruling is attached as appendix A. A copy of the order denying the petition for rehearing is attached as Appendix B.

Jurisdiction

The jurisdiction of this court is invoked under title 28, U.S. Code Section 1254 (1), because the Court of Appeals State of New York denial of rehearing 7 July , 1931 affirming the decision of lower courts of Statue of Limitations.

Constitutional Provision Involved

U.S. Constitution, Amendment V & XIV

no person shall ..... be deprived of life, liberty or property, without due process of law ;

STATEMENT OF THE CASE

In 1953 the Petitioner employed as a surgical technician at Flushing Hospitial, New York City witnessed a mal-practice death of a boy. There were routine procedures violated in examining the patient who suffered cardiac arrest. Dr. Apogi an anesthesiologist, did not inform the surgeon of this fact. The supervisor did not inform the Petitioner of the condition of the patient. Had the procedures been observed the boy might have lived. Subsequently I began to receive criticism concerning my work from my superiors. I was warned if I continued to work at Flushing Hospital, I would be terminated. I was called in by subordinates and terminated without specific reasons given. This violated my constitutional rights as I did not have the opportunity to appeal through the hospital's greviance procedures. I saw no administrator in authority.

Dr. Ascione who was an anesthesiologist at Flushing Hospital , took part in a conspiracy to deprive me of employment and destroy my physical well being. After my dismissal from Flushing Hospital , I went to Dr. Ascione . I told him about my physical condition which was poor. My physical condition was prescribed as an organic physical problem. He told me he was taking over and I could be able to return to work when cured. The pressure of my being terminated from employment and the physical breakdown affected my wife Constance mental state. She would become petrified . She would become very nervous as Dr. Ascione had stated I would die. Dr. Ascione had the petitioner taking medical treatments. I was taken to Brentwood State Hospital L.I. against my will, due to the influence of the Respondant. I also spent time at Bellvue .

I live off disability and SSSI Insurance.

Sworn to before me
this 1st of October 1981

Vincent Pascarelli

VINCENT PASCARELLI
Notary Public, State of New York
No. 24-4517344
Qualified in Kings County
Commission Expires March 30, 1982

Rocco Fischetti

Rocco Fischetti

Reasons For Granting Writ

1. The Petitioner did not know of the defendants damage against him until March 1975, when informed by Attorney Steven Giano . Pursuant to CPLR 213 (g) & CPLE (F) the Statue of Limitations, accordingly be 6 years from the Commission of the Wrong and 2 years of the discovery thereof which is later. On this basis March 1975 is the date that the Petitioner discovered the fraud. The Plaintiff declares that the suit was filed timely and within the discovery date. In Newk Hampshire the Supreme Court Struck down a 1977 statue that put severe restrictions on medical mal-practice recovery actions. The court ruled that the law unconstituionally denied plaintiffs in those suits the equal protection enjoyed by claimants in other tort actions. In Caron Vs Mauren 80-017 decision the court also held that the Statue of Limitations will run when the plainfiff discovers both his injury and its cause. The court went after a provision that required the filing of a suit to be conditional on a notice of claim. The court rubed that this requirement does not fully and substantially relate to a legitimate objective.

The lower courts completely ignored State Statues , which were the basis of the Petitioner's appeal. For years after the Petitioner's termination and blacklisting from employment he suffered from heart disease and shock. He was in no dondition to engage in litigation and had no knowledge of any conspiracy until informed of torts in 1975.

2. The lower courts erred in affirming the decision of the Superior Court without opinion. This is improper because there was no ruling on the merits of the appeal. In the only hearing on the petitioners appeal which took place in Appellate Pro tem , he was told by the presiding judge that he would be allowed only five minuetes to present an oral argument.

Conclusion

For the foregoing reasons, Petitioner respectfully submits that a writ of certiorari should issue to review the judgment of the State of New York Court of Appeals

Respectfully submitted,

ROCCO FISCHETTI

Sworn to before me
this 1st day of October, 1991

VINCENT PASCARELLI
Notary Public, State of New York
No. 24-4517344
Qualified in Kings County
Commission Expires March 30, 1992

HON. FRANK A. CULOTTA,
HON. CHARLES MARGETT,
HON. FRANK D. O'CONNOR. } *Associate Justices*

Rocco Fischetti,

Appellant,

v.

Joseph Ascione,

Respondent.

Order on Appeal from Order

In the above entitled cause, the above named Rocco Fischetti, plaintiff,

having appealed to this court from an order of the Supreme Court, Queens County, dated March 22, 1979;

and the said appeal having been argued by Rocco Fischetti, appellant pro se, and submitted by Michael B. Schad, Esq., of counsel for the respondent, and due deliberation having been had thereon; and upon this court's decision slip heretofore filed and made a part hereof, it is:

ORDERED that the order appealed from is hereby unanimously affirmed, without costs or disbursements.

Enter:

Irving N. Selkin

Clerk of the Appellate Division

FRANK D. O'CONNOR, JJ.

_____ AD2d _____

A - October 14, 1980

2310 E

Rocco Fischetti, appellant,
v Joseph Ascione, respondent.

Rocco Fischetti, Flushing, N.Y. appellant pro se.

Anthony L. Schiavetti, New York, N.Y. (Michael B. Schad of counsel), for respondent (no brief filed).

Order of the Supreme Court, Queens County (WEINSTEIN, J.), dated March 22, 1979, affirmed, without costs or disbursements. No opinion.

HOPKINS, J.P., GULOTTA, MARGETT and O'CONNOR, JJ., concur.

2 Mo. No. 704

Rocco Fischetti,

Appellant,

vs.

Joseph Ascione,

Respondent.

Motion for leave to appeal denied.

DECISION COURT OF APPEALS JUL - 7 1981

38-18-147th St.
Flushing, Queens, NY
July 31, 1981

Supreme Court of U.S.
Washington, D.C. 20543

NOTICE OF APPEAL

To Whom it May Concern:

On July 7, 1981 the Court of Appeals of New York, denied my motion for Leave To Appeal. I would like to appeal to the Supreme Court of U.S.

The basis on which I would like a Writ of Certiorari granted is the fact that the Court of Appeals gave no opinion. Also, the discoveyy date issue CPLR 213 (g) & CPLE (f), in this mal-practice civil case was not ruled on. The Court of Appeals, simply affirmed the lower courts decision of Statue of Limitations.

Wherefore, it is respectfully requested that permission be granted to appeal from the decision of the Court of Appeals.

Sworn before me Aug 3, 1981
Beatrice A. Pacifico

BEATRICE A. PACIFICO
NOTARY PUBLIC, State of New York
No. 41-4652437-Qual. in Queens Co.
Commission Expires March 30, 1983

Rocco Fischetti
ROCCO FISCHETTI